

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.848 of 1996

D.Shanmugha Desikar

.... Appellant

vs.

1. The Commissioner
Hindu Religious and Charitable Endowment
No.119, Nungambakkam High Road,
Madras - 34.

2. The Deputy Commissioner
Office of the Commissioner,
Hindu Religious and Charitable Endowment
No.119, Nungambakkam High Road,
Madras - 34.

.... Respondents

Appeal filed against the Judgment and Decree dated 28.06.1996 made in O.S.No.120 of 1990 on the file of the Sub Judge, Tiruvallore.

For Appellant : Mr.P.Gopalan

For Respondents : Mr.M.R.Murugesan, Spl.G.P.
H.R. & C.E.,

JUDGMENT

This appeal is directed against the Judgment and Decree, dated 28.06.1996 made in O.S.No.120 of 1990 on the file of the Court of the Subordinate Judge, Tiruvallore.

2. The plaintiff in the suit before the trial court is the appellant herein. The appellant / plaintiff had filed the suit, seeking to set aside the order, dated 26.03.1990 passed by the first respondent in A.P.No.44 of 1987 and declare that Anjamadathur Pillayar alias Vinayagar temple in No.27, South Mada Street, Tiruvottiyur is a private temple of the plaintiff.

3. It is seen that the appellant / plaintiff himself was examined as P.W.1, apart from one Nataraj, who was examined as

P.W.2, apart from marking documents Exs.A.1 to A.9. An Inspector of Hindu Religious and Charitable Endowment has been examined as D.W.1. Considering the oral and documentary evidence, the trial court dismissed the suit. Aggrieved by which, this appeal has been preferred by the plaintiff in the suit.

4. Mr.P.Gopalan, learned counsel appearing for the appellant would contend that there is no temple in the property in question, only vinayagar idol was installed inside the private property, belongs to the appellant to perform pooja by the family members of the appellant and property tax had been assessed in the name of the appellant's father and after his demise, the appellant is paying the property tax. Learned counsel for the appellant further submitted that the property in question was bequeathed by the testator, Lakshmiammal under her Will, dated 26.04.1940 in favour of Doraiswamy Desikar, father of the appellant and after his death, the appellant herein inherited the same. According to him, after the demise of the legatee, the appellant's father was performing pooja and also 'thithi' every year, as per the Will. The vinayagar idol has been installed in the private patta land of his predecessors, for the purpose of their worship and for performing poojas and that no member of the public or even neighbours are being allowed to worship the vinayagar idol. According to him, there is no public donation or contribution for performing pooja or 'thithi' and that there is no Gopuram, Nandhi, Pragaram, Hundial etc and that there is no dedication of the property by the public in favour of the temple and therefore, it could have been decided only as private temple by the trial court and decreed the suit, as prayed for in favour of the appellant.

5. Per contra, Mr.M.R.Murugesan, Special Government Pleader (H.R. & C.E) appearing for the respondent contended that while claiming the suit property as a private temple, as per the Tamil Nadu Hindu Religious and Charitable Endowment Act, the burden is upon the appellant to establish that it is a private temple belongs to the petitioner and his family members. Merely because there is no Gopuram, Nandhi, Pragaram, Hundial, it cannot be presumed that it is a private temple, in the absence of any positive evidence in favour of the appellant herein.

6. According to the learned counsel for the appellant, if a temple was not used as a place of public religious worship by Hindu community or section thereof and none of ingredients of temple viz, gopuram, nandhi etc., were available in the temple and no dedication of property by public in favour of temple, the temple does not come within the purview of religious institution, as defined under Section 2 (18) of Tamil Nadu Hindu Religious and Charitable Endowments Act (22 of 1959). In support of his contention, the decision, Commr., H.R. & C.E (A) Dept. vs. Jambulingam Pillai, reported in 1996 A I H C 3192 was cited.

7. This Court, by its ruling in Commissioner, H.R. & C.E. (Admn) Department, Madras vs. Sundaraswamy Gounder, reported in 2001 (2) MLJ 737, has held that mere circumstances, that the people in the locality were visiting a temple, will not make a private temple into a public one.

8. In V.Mahadeva vs. Commissioner, H.R. & C.E, reported in 1956 (1) MLJ 309, the Division Bench of this Court held as follows :

" A temple which began as a private temple may, in course of time, become a public temple by express or implied dedication, the latter being proved by use of the temple by the Hindu Public as of right and without taking any permission from anyone. Under Sec. 9(12) no express dedication on a definite date need be proved, if it is prove beyond all doubt that the temple has been used as of right by the Hindu public as a place of religious worship without taking anybody's permission, leading to an irresistible inference of implied dedication. The law requires only the conditions stipulated under S.9(12) to be satisfied before a temple is declared to be a public temple. Once these conditions are satisfied, the temple will be a public temple under Sec.9(12), though those conditions must of course be strictly proved. There is nothing in our law preventing a thing which began as a private property becoming public property later on."

In the aforesaid decision, the claim was that Sri Vallabha Vinayagar temple in George town, Chennai was a private temple. The Division Bench of this Court held that even a private temple may in course of time become public one by express or implied dedication. Accordingly, the Division Bench rejected the claim that it was a private temple, on the ground that the Hindu public used this as a place of worship as of right and offerings were received from the public.

9. In the instant case, the appellant / plaintiff has stated that the site and the temple thereon belonged to the father of the plaintiff, who became the owner under a registered Will, dated 26.04.1990 and the Will has been marked as Ex.A.5 in the suit. As per the recitals of the Will, Lakshmiammal, w/o Susanthapuri Desikar @ Samarapuri Desikar had sold certain properties in favour of Duraisamy Desikar, s/o Kaalathi Desikar, described as "A" Schedule of property therein. As per this Will, it is clear that

the said Lakshmiammal died issueless and her husband pre deceased her. However, in the evidence, the appellant, who was examined as P.W.1 has stated that Lakshmiammal was his grand mother. The aforesaid statement is contrary to the averments of Ex.A.5. Further, as per this Will, the said Duraisamy Desikar had to perform daily poojas and special abishekam at Sri Anjamadathur Pillayar temple and also her annual thithi. Therefore, it is clear that the property described in Schedule "D" and "E" have been vested for performing certain specific duties by the deceased Lakshmiammal.

10. As contended by the learned counsel appearing for the respondents, there is no evidence available on record to show that the said Lakshmiammal had absolute right over the suit property and there is no evidence to show that the superstructure of the temple had been constructed by Lakshmiammal or her predecessor. Though the appellant has claimed the suit temple as his private property, he has not produced the required documents to substantiate his claim.

11. Further, as per the evidence of D.W.1, though the Inspector of H.R. & C.E. has admitted that there was no gopuram or palipeedam for the temple, according to her, while inspecting the temple, she could see the general public use to visit the temple and perform poojas and as per the records of the H.R. & C.E., it was under the contral of Hindu Religious and Charitable Endowment, for which there was a notification by the Commissioner, H.R. & C.E. Admittedly, the appellant has not produced any Legal Heir certificate to show that either himself or his father was a direct legal heir of Lakshmiammal, though he has claimed in his evidence that he is the grand son of Lakshmiammal. As per the Will, Ex.A.5, produced by the appellant, the said Lakshmiammal died issueless.

12. In the aforesaid circumstances, this Court is of the view that it cannot be decided that the suit temple is the private temple, exclusively belongs to the appellant herein, on the basis of the available evidence and further, there is no evidence to show that Lakshmiammal had absolute title to the property, except her registered Will, Ex.A.5.

13. It is also necessary to find out the superstructure, location of the temple and also the physical features of the temple to decide the issues involved in the suit, for which an Advocate Commissioner shall be appointed to inspect the property and file his report.

14. In the order passed by the Hindu Religious and Charitable Endowment, dated 26.03.1990, based on the Inspector's Report, Ex.C.1, marked therein, the Commissioner, H.R. & C.E has held that the temple has all the features for public temple and that there is

public worship, including performance of poojas etc and also distribution of prasadams to the worshippers, that the income from the properties has not been accounted for, that the property tax receipt might have been for the shop adjacent to the temple and that none of documents thrown light to prove the private nature of the institution.

15. In such circumstances, to meet the ends of justice, I am of the view that it would be proper to remit back the matter to the trial court for fresh disposal, according to law, since further evidence on factual aspects are needed for proper disposal.

16. In the result, the appeal is allowed and the impugned Judgment and Decree, passed by the trial court are set aside and the matter is remitted back to the trial court for fresh disposal. The trial court is directed to provide reasonable opportunity to both sides to adduce further evidence, both oral and documentary and dispose the same, according to law, independently, based on the evidence, within three months from the date of receipt of the copy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

tsvn

To

1. The Subordinate Judge,
Tiruvallore.

2. The Record Keeper
VR Section, High Court, Madras.

1 cc to Mr.P. Gopalan, Advocate, sR. 75713

A.S.No.848 of 1996

JRG (CO)
kk 30/1